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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,649	05/18/2006	Nancy Daou	J3734(C)	9363

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UNILEVER PATENT GROUP  
800 SYLVAN AVENUE  
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ENGLEWOOD CLIFFS, NJ 07632-3100

EXAMINER
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SIMMONS WILLIS, TRACEY A

ART UNIT	PAPER NUMBER
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1619

MAIL DATE	DELIVERY MODE
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01/14/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/579,649	DAOU ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	TRACEY SIMMONS WILLIS	1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 23 October 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-12 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>08072006; 08282008</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

## **DETAILED ACTION**

### ***Status of the Claims***

Examiner notes Applicant's response to a restriction requirement filed on October 23, 2008 in which Applicant selected with traverse, Group I, including claims 1-10. Examiner has withdrawn the restriction requirement upon further consideration. Any claim(s) presented in a continuation or divisional application that are anticipated by, or rendered obvious over, the claims of the parent application may be subject to a double patenting rejection when the restriction requirement is withdrawn in the parent application. *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claims 1-12 are pending and are the subject of this Office Action. This is the first Office Action on the merits of the claims.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 11 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 11 is rejected under 35 U.S.C. 112 second paragraph for the following reasons:  
instant claim 11 cites “A method of preparing an opacified hair conditioning composition by *using* a composition according to claim 1”. However, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent Application Publication EP0956850 (Kruger) in view of U.S. Patent 5,482,703 (Pings) and U.S. Patent 6,613,316 (Sun et al).

Kruger teaches of hair conditioning formulation [pg 3, par 13, line 44] comprising a cellulose ether and a quaternary ammonium compound [pg 1, par 3, lines 14-15]. The quaternary ammonium compounds include cetyl trimethylammonium chloride and dipalmitoylethyldimonium chloride and can be used as a mixture in the formulation [pg 1, par 7, lines 50-52]. Amounts of the quaternary ammonium compound range from 0.15 to 5 wt%, with

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a preferred range of 0.2 to 2 wt% [pg 1, par 7, lines 54 and 56]. Other components included in the formulation of one embodiment taught by Kruger are 2.5 wt% cetyl alcohol (fatty material) [pg 3, par 13, line 54], and 89.95 wt% water [pg 4, par 13, line 2] and oil components [pg 3, par 7, line 1]. The hair formulations are applied to the hair as rinses and creams [pg 3, par 10].

While Kruger mentions sodium chloride in the cellulose ether in an amount less than or equal to 4 wt% [pg 3, par 12, line 37], Kruger does not teach of potassium chloride as the alkali metal salt. Kruger also does not teach of the method of use of the formulation, of specific oils, or of the ratios of quaternary ammonium compounds when used as a mixture.

Pings teaches of hair conditioning compositions [col 1, lines 8-10] comprising water, a silicone conditioning agent (silicone oils [col 3, line 20]), a cationic surfactant (cetyl trimethyl ammonium chloride [col 6, line 5]) and fatty alcohols [col 2, lines 23 and 32-34]. Pings further teaches of salts used such as potassium chloride in range of 0.001 to 1 wt% [col 7, lines 10-12].

Sun et al teach of aqueous opaque conditioners using two different conditioning agents at ratios that optimize their benefit [col 2, lines 59-60 and 67]. The ratio of monoalkyl quat to dialkyl quat ranges from about 15:1 to 2:1 or from about 10:1 to 2:1 [col 3, lines 38 and 40].

The ranges for the quaternary ammonium compounds as taught by Kruger overlap with those cited in the claims for the alkyl trimethylammonium salt, and the preferred range falls within that cited for the dialkoylethyl dimethylammonium salt. The range for alkali metal salt as taught by Pings overlaps with the cited range. The amount of the fatty alcohol and water taught by Kruger fall within the cited ranges. One of ordinary skill in the art at the time of the invention would have been motivated to optimize the amounts of the components in the composition for

the desired thickness (viscosity), opaqueness (resulting from the quaternary ammonium compounds and fatty alcohol), and conditioning benefits on the hair.

One of ordinary skill in the art at the time of the invention would have been motivated to add silicone oils to the formulation of Kruger for added conditioning benefit to the hair. One of ordinary skill in the art at the time of the invention would have also been motivated to add an alkali metal halide to and further optimize the amount of alkali metal halide in the composition of Kruger to modify the rheology of the formulation as suggested by Pings [col 7, lines 9-10]. Pings also teaches of use of the composition by applying to hair, rinsing [col 7, lines 64 and 67], and drying [col 11, line 6]. One of ordinary skill in the art at the time of the invention would have found it *prima facie* obvious to use the steps taught by Pings for the formulation of Kruger in order to use the formulation to condition the hair, particularly if the formulation is not a leave-in conditioner. With regard to claim 11, Examiner interprets the claim as being drawn to a method as taught above that uses the composition of claim 1. One of ordinary skill in the art at the time of the invention would have been motivated to optimize the ratios of quaternary ammonium compounds based on the desired softness, shine, and combability of the hair.

### ***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRACEY SIMMONS WILLIS whose telephone number is (571)270-5861. The examiner can normally be reached on Mondays to Fridays from 8:30 am to 5:30 pm. The examiner can also be reached on alternate Fridays from 8:30 am to 12:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached at (571)272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/T. S.W./

Examiner, Art Unit 1619

/Lora E Barnhart/

Primary Examiner, Art Unit 1651